
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Federal-State Joint Board on Universal Service)
)
Dobson Cellular Systems, Inc.) CC Docket No. 96-45
American Cellular Corporation)
)
Joint Petition for Designation as Eligible)
Telecommunications Carriers in the State of)
New York)

To: Chief, Wireline Competition Bureau

**JOINT PETITION FOR DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS
CARRIERS IN THE STATE OF NEW YORK
(RURAL REDEFINITION REQUESTED)**

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SUMMARY

Dobson is requesting ETC designation in New York in two petitions. In this petition, Dobson requests ETC designation specifically in those portions of rural local exchange carrier (“LEC”) study areas in New York that Dobson is not licensed to serve in their entirety and thus must be redefined. In a separate petition, Dobson is requesting ETC designation in non-rural LEC service areas throughout Dobson’s entire licensed service areas in New York including, to the extent necessary, those portions of non-rural LEC service areas where Dobson provides service. Also in that separate petition, Dobson is requesting ETC designation in only those rural LEC study areas that are wholly contained within Dobson’s service area. As demonstrated below, Dobson meets all of the statutory and regulatory prerequisites for ETC designation. Furthermore, FCC designation of Dobson as an ETC will serve the public interest.

Dobson seeks federal universal service support in order to speed the deployment of advanced wireless network facilities that support the provision of both basic wireless services and higher-bandwidth and enhanced services to consumers in New York. As an ETC, Dobson also will offer a basic universal service package to subscribers who are eligible for Lifeline support. Dobson expects that its service offerings will be competitive with those of the incumbent wireline carriers.

Dobson satisfies each of the five elements required for ETC designation pursuant to Section 214(e)(6): the New York Department of Public Service has provided an affirmative statement that it does not regulate CMRS carriers; Dobson offers all of the services supported by the federal high-cost universal service program (voice grade access to the public switched telephone network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services, operator services, interexchange service, and directory assistance; and toll limitation for qualifying low-income consumers); Dobson offers supported services through use of its own facilities; Dobson will advertise its universal service offering; and Dobson has described the geographic area in which it requests designation.

Dobson is licensed to serve only certain wire centers making up portions of the study areas of the rural LECs identified herein. Accordingly, Dobson requests that it be designated as an ETC within the boundaries of these wire centers. Allowing competitive carriers to be designated for service areas that do not comprise entire rural LEC study areas is necessary to competitive entry. There is no risk of cream skinning. As a wireless carrier, Dobson is restricted to providing service in those areas where it is licensed by the Commission. Furthermore, by bypassing the opportunity to target support, the rural telephone companies must have believed that their costs are homogeneous across their service areas, and/or in light of foreseeable competition were not concerned about the prospect of cream-skimming by competitors. In any event, however, an analysis of the population densities of the wire centers that Dobson is able to serve compared to those it does not reveals, under the standards set out in the *Virginia Cellular* and *Highland Cellular* decisions, that no “de facto” cream skinning concerns are raised. By finding that Dobson’s ETC designation is in the public interest, the Commission will have duly considered the special status of the rural carrier for purposes of determining whether Dobson’s service area designation should be adopted for federal universal

service funding purposes. In addition, definition of Dobson's service area as proposed in this Petition will not impose any additional burdens on rural LECs.

Designating Dobson as an ETC in New York will further the public interest by bringing to New York's telecommunications consumers in rural and high-cost areas the benefits of competitive, advanced wireless services by a carrier with a commitment to rural service. Designating Dobson as an ETC will allow Dobson to further develop its state-of-the-art network to the benefit of New York's rural consumers. Because Dobson's network will have the capability of providing advanced telecommunications services that meet or exceed what can be provided on a landline network, New York's rural consumers will have access to these developing technologies to the same degree as consumers in urban areas. In addition to increased service choices, New York's rural consumers can expect lower rates and more choices resulting from competition. Competition also provides an incentive for the incumbent rural telephone companies to invest in new technologies and additional infrastructure, which likewise will benefit New York's rural consumers. The public interest will be further served by the expeditious grant of this Petition.

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To: Chief, Wireline Competition Bureau

**PETITION FOR DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS
CARRIERS IN THE STATE OF NEW YORK
(RURAL REDEFINITION REQUESTED)**

Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended,¹ Dobson Cellular Systems, Inc. and American Cellular Corporation (collectively, “Dobson”) hereby jointly petition the Commission for designation as Eligible Telecommunications Carriers (“ETCs”).²

Dobson is requesting ETC designation in New York in two petitions. In this petition, Dobson requests ETC designation specifically in those portions of rural local exchange carrier (“LEC”) study areas in New York that Dobson is not licensed to serve in their entirety and thus must be redefined. In a separate petition, Dobson is requesting ETC designation in non-rural LEC service areas throughout Dobson’s entire licensed service areas in New York including, to

¹ 47 U.S.C. § 214(e)(6).

² Dobson Cellular Systems, Inc. and American Cellular Corporation are wholly owned subsidiaries of Dobson Communications Corporation.

the extent necessary, those portions of non-rural LEC service areas where Dobson provides service. Also in that separate petition, Dobson is requesting ETC designation in only those rural LEC study areas that are wholly contained within Dobson's service area. As demonstrated below, Dobson meets all of the statutory and regulatory prerequisites for ETC designation. Furthermore, FCC designation of Dobson as an ETC will serve the public interest.

I. DOBSON'S UNIVERSAL SERVICE OFFERING

Dobson is the A block licensee authorized to provide Cellular Radiotelephone Service in the New York 3, 5 and 6 Rural Service Areas ("RSAs") and the Orange County, New York and Poughkeepsie, New York Metropolitan Statistical Areas ("MSAs"). As a cellular provider, Dobson is a common carrier as defined in 47 U.S.C. § 153(10), and the FCC regulates Dobson as a commercial mobile radio service ("CMRS") provider as defined in 47 U.S.C. § 332(c)(1).³

Dobson seeks federal universal service support in order to speed the deployment to consumers in New York of advanced wireless network facilities that support the provision of basic wireless services as well as higher-bandwidth and enhanced services. As an ETC, Dobson also will offer a basic universal service package to subscribers who are eligible for Lifeline support. Dobson expects that its service offerings will be competitive with those of the incumbent wireline carriers.

Dobson currently provides all the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission's rules, throughout its wireless service areas in New York. Upon designation as an ETC, Dobson will make available to consumers a universal service offering over its wireless network infrastructure,

³ See 47 C.F.R. § 20.9(a)(7).

using the same antenna, cell site, tower, trunking, mobile switching, and interconnection facilities used by Dobson to serve its existing conventional mobile wireless service customers (as augmented over time through further network investment, as described herein). Dobson will also undertake the efforts discussed below to provide service to any customer requesting this service within the designated service area.

II. DOBSON SATISFIES ALL OF THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ETC.

Dobson satisfies each of the five elements required for ETC designation pursuant to Section 214(e)(6), as demonstrated below.⁴

A. The New York Department of Public Service Has Provided an Affirmative Statement That it Does Not Regulate CMRS Carriers.

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁵ As a CMRS carrier, Dobson is entitled to seek designation as an ETC.⁶ Pursuant to Section 214(e)(6), the Commission may, upon request, designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”⁷

⁴ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22,947 (1997) (“Section 214(e)(6) Public Notice”).

⁵ 47 U.S.C. § 254(e).

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *First Report and Order*, 12 FCC Rcd 8776, 8858-59 (1997) (“*First Report and Order*”).

⁷ 47 U.S.C. § 214(e)(6).

In the *Section 214(e)(6) Public Notice*, the Commission established that a carrier must demonstrate it “is not subject to the jurisdiction of a state commission” in order to petition the Commission for designation as an ETC.⁸ Further, the Commission has stated that where a carrier provides the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation, the Commission would consider requests filed pursuant to Section 214(e)(6).⁹

The New York Department of Public Service (“NY DPS”) has affirmatively stated that it lacks jurisdiction over ETC applications by CMRS carriers. Specifically, the NY DPS recently indicated that a CMRS provider would not be subject to the application of the New York State Public Service Law, and, consequently, the jurisdiction of the New York Public Service Commission (“NY PSC”), for purposes of making the Eligible Telecommunications Carrier designation.¹⁰

The NY DPS has clearly indicated that it does not intend to designate CMRS carriers as ETCs. Dobson therefore, as a CMRS carrier, is not subject to the jurisdiction of the state commission. Accordingly, as the letter cited above provides the requisite “affirmative

⁸ *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22,948.

⁹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12,208, 12,264 (2000) (“*Twelfth Report and Order*”).

¹⁰ See NPCR, Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, Attachment 2 (filed Apr. 3, 2003) (attaching a letter from Elizabeth H. Liebschutz, Assistant Counsel, New York Department of Public Service, dated Mar. 27, 2003). A copy of the NY DPS’ letter is attached as Exhibit A.

statement” in satisfaction of Section 214(e)(6), Dobson requests that the Commission grant Dobson ETC designation in New York.

B. Dobson Offers All of the Services Supported by the Federal High-Cost Universal Service Program.

In addition to being a common carrier, a carrier must offer and advertise the supported services throughout the designated service area in order to be designated as an ETC.¹¹ The Commission has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms:

1. voice grade access to the public switched telephone network;
2. local usage;
3. dual tone multi-frequency (“DTMF”) signaling or its functional equivalent;
4. single-party service or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service;
8. access to directory assistance; and
9. toll limitation for qualifying low-income consumers.¹²

According to the *Section 214(e)(6) Public Notice*, applicants must certify that they provide each of the supported services or, where appropriate, its functional equivalent.¹³ As demonstrated below and in the Declaration attached as Exhibit B, Dobson provides each of the required services throughout the areas for which it seeks designation.

¹¹ 47 U.S.C. § 214(e)(1).

¹² 47 C.F.R. § 54.101(a).

¹³ *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22,948 & n.5.

1. Voice Grade Access to the Public Switched Telephone Network.

The Commission has determined that voice grade access to the public switched telephone network means the ability to make and receive calls with a minimum bandwidth of 300 to 3500 Hertz.¹⁴ Dobson meets this requirement as its customers are currently able to make and receive calls on the public switched telephone network within the Commission's specified bandwidth.

2. Local Usage.

An ETC must include local usage as part of a universal service offering. To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a proceeding seeking comment on how much, if any, local usage an ETC should be required to offer.¹⁵ Dobson will include local usage in all of its universal service offerings within Dobson's defined local service areas as part of its monthly service package. In addition, Dobson will comply with any local usage requirements adopted by the Commission in the future and required of federal ETCs.

3. Dual Tone Multi-Frequency Signaling or Its Functional Equivalent.

"Dual Tone Multi-Frequency" ("DTMF") is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the Commission permits carriers to provide signaling that is functionally equivalent to DTMF, such as out-of-band digital signaling, in satisfaction of

¹⁴ *First Report and Order*, 12 FCC Rcd at 8810-11.

¹⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21,252, 21,279-81 (1998).

this service requirement.¹⁶ Dobson currently uses out-of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent to DTMF signaling. Dobson therefore meets the requirement to provide DTMF signaling or its functional equivalent.

4. Single-Party Service or its Functional Equivalent.

“Single-party service” means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line.¹⁷ The Commission concluded that a wireless provider offers the equivalent of a single-party service when it offers a dedicated message path for the length of a user’s particular transmission.¹⁸ Dobson meets the requirement of single-party service by providing a dedicated message path for the length of a user’s wireless transmission in all of its service offerings.

5. Access to Emergency Service.

“Access to emergency service” means the ability to reach a public emergency service provider by dialing 911. Dobson currently provides all of its customers with the ability to access emergency services by dialing 911, which will be included in Dobson’s universal service offerings. Dobson will also provide Enhanced 911 service consistent with FCC requirements, when such service is requested by local public safety authorities ready to receive such information and where such service is supported by the local exchange carrier.¹⁹

¹⁶ 47 C.F.R. § 54.101(a)(3).

¹⁷ *First Report and Order*, 12 FCC Rcd at 8810.

¹⁸ *Id.*

¹⁹ *See* 47 C.F.R. § 20.18(j); *First Report and Order*, 12 FCC Rcd at 8815-17.

6. Access to Operator Services.

“Access to operator services” means any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call.²⁰ Dobson meets this requirement by providing all of its customers with access to operator services provided either by Dobson or other entities (*e.g.*, LECs, IXC, etc.).

7. Access to Interexchange Service.

“Access to interexchange service” means offering a service to customers to make and receive toll or interexchange calls.²¹ Dobson currently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection agreements with several IXCs. In most cases, Dobson offers its customers interexchange minutes at no additional charge to local minutes. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

8. Access to Directory Assistance.

“Access to directory assistance” means the ability to place a call to directory assistance.²² Dobson currently meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

²⁰ *Id.* at 8817-18.

²¹ Equal access to interexchange service is not required. “The FCC do[es] not include equal access to interexchange service among the services supported by universal service mechanisms.” *Id.* at 8819.

²² *Id.* at 8821.

9. Toll Limitation Services.

“Toll limitation” includes the offering of either “toll control” or “toll blocking” services to qualifying Lifeline customers at no additional charge.²³ Dobson currently provides toll-blocking services for international calls and customer selected toll calls. Once designated an ETC, Dobson will offer toll blocking to its Lifeline customers at no additional charge.

C. Dobson Offers Supported Services Through Use of its Own Facilities.

A carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”²⁴ Dobson will provide the supported services using its existing network infrastructure, which includes the antennas, cell sites, towers, trunking, mobile switching, and interconnection facilities used by Dobson to serve its existing customers.

D. Dobson Will Advertise its Universal Service Offering.

Dobson currently offers and advertises its wireless services to both residential and business customers in New York using media of general distribution, including newspaper, radio, television, billboard and print advertising. Dobson also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. As an ETC, Dobson will advertise through media of general distribution the availability of the universal service offerings and the corresponding rates for those services throughout its designated service areas in a manner that fully informs the general public. Dobson’s advertisements of its universal service offerings will be part of and integrated into its

²³ 47 C.F.R. § 54.101(a)(9).

²⁴ 47 U.S.C. § 214(e)(1)(A).

current advertising for its existing array of services and offerings in a manner that fully complies with federal requirements, and Dobson commits to such advertisements in the future.

III. SERVICE AREA FOR DESIGNATION

Dobson is not a “rural telephone company” as defined by 47 U.S.C. § 153(37). Accordingly, Dobson is required to describe the geographic area in which it requests designation.²⁵ In this application, Dobson requests ETC designation in those portions of rural LEC study areas that Dobson is not licensed to serve in their entirety and thus must be redefined. A map of Dobson’s proposed ETC service area is attached hereto as Exhibit C. In a separate petition, Dobson is requesting ETC designation in non-rural LEC service areas throughout Dobson’s entire licensed service areas in New York including, to the extent necessary, those portions of non-rural LEC service areas where Dobson provides service. Also in that separate petition, Dobson is requesting ETC designation in only those rural LEC study areas that are wholly contained within Dobson’s service area.

Pursuant to Section 54.207 of the Commission’s rules, a “service area” is a “geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms.”²⁶ In situations where Dobson is not licensed to serve a rural LEC study area in its entirety, Dobson may be designated as an ETC once the Commission makes a determination under 47 C.F.R. § 54.207(d) to redefine a study area served by a rural telephone company, including by wire center boundaries.²⁷ Dobson is licensed to serve only

²⁵ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

²⁶ 47 C.F.R. § 54.207.

²⁷ See, e.g., *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, CC (continued on next page)

certain wire centers making up portions of the study areas of the rural LECs identified in Exhibit D. Accordingly, Dobson requests that it be designated as an ETC within the boundaries of the wire centers specified in Exhibit D. In its two NY petitions, Dobson is seeking ETC designation for every wire center that it is licensed to serve; Dobson is not selectively excluding any wire centers.²⁸

Because the NY PSC does not have jurisdiction to designate Dobson as an ETC, the Commission has jurisdiction to consider Dobson's request for designation as an ETC for a service area that differs from the study area boundaries of the affected rural telephone companies.²⁹ Because the area requested by Dobson for ETC designation only partially covers the study areas of the LECs set forth in Exhibit D, the Commission must make the determination under 47 C.F.R. § 54.207 that Dobson's designated ETC service area may differ from the study area boundaries of these LECs.

Allowing competitive carriers to be designated for service areas that do not comprise entire rural LEC study areas is necessary to competitive entry. A petition to define a designated service area in this manner must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with

Docket No. 96-45, *Memorandum Opinion and Order*, 17 FCC Rcd 24,393, at ¶¶ 8, 34 (Deputy Chief, Wireline Comp. Bur., 2002) ("*Cellular South Order*").

²⁸ Dobson has only excluded wire centers that it is partially licensed to serve, to avoid the need to redefine a service area below the wire center level. The Commission recently ruled that "making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest." *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 04-37 at ¶ 33 (rel. Apr. 12, 2004) ("*Highland Cellular Order*").

²⁹ See *supra* section II.A.

respect to the definition of a service area served by a rural telephone company.”³⁰ In the *Recommended Decision* that laid the foundation for the Commission’s *First Report and Order*, the Federal-State Joint Board (“Joint Board”) enumerated three factors to be considered when reviewing a request for designation as an ETC for a geographical area that differs from a rural LEC’s entire study area: the potential for cream skimming, the rural carriers’ special status under the Telecommunications Act, and the administrative burden a rural LEC would face.³¹ Each of these factors is addressed below.

Cream Skimming Concerns

The Joint Board advised the state commission to consider whether the competitive carrier is attempting to “cream skim” by only proposing to serve the lowest cost exchanges.³² As demonstrated below, this factor relating to risk of cream skimming is not present. As a wireless carrier, Dobson is restricted to providing service in those areas where it is licensed by the Commission. Dobson seeks redefinition of the rural telephone company service areas at the wire center level so it can be designated as an ETC in all areas for which it has the authority and ability to provide service.

Moreover, as of May 2002, rural incumbent LECs have been required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level.³³ When support is no longer averaged across an

³⁰ 47 C.F.R. § 54.207(c)(1).

³¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1996) (“*Recommended Decision*”).

³² *Id.* at 180.

³³ *See* 47 C.F.R. § 54.315.

incumbent LEC's study area, a competitor will have neither the incentive nor the ability to enter into incumbent LEC service territories in an uneconomic manner.³⁴ Therefore, as the Commission earlier concluded, "any concern regarding 'cream-skimming' of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated."³⁵

Two of the rural telephone companies, Citizens Telecom-NY and Citizens Tel. Co. of NY, elected to disaggregate and target support under Path 3, and thus any support Dobson receives as an ETC will be consistent with this LEC's own determination of how support should be targeted.³⁶ All of the remaining rural telephone companies impacted by this Petition selected Path 1 and thus opted not to disaggregate and target support.³⁷ By bypassing the opportunity to target support, these rural telephone companies must have believed that their costs are homogeneous across their service areas, and/or in light of foreseeable competition were not concerned about the prospect of cream skimming by competitors. Accordingly, their choice of Path 1 cannot serve to insulate them from competitive ETCs who by virtue of their service areas may only be able to serve the lower-cost portions of their study areas.

³⁴ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Fourteenth Report and Order*, 16 FCC Rcd at 11,244, 11,302 (2001).

³⁵ *Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Order on Reconsideration*, 16 FCC Rcd 19,144, 19,149 (2001).

³⁶ See *The Universal Service Administrative Company Disaggregation Checklist at* <http://www.universalservice.org/hc/disaggregation/checklist.asp> (last modified July 16, 2003).

³⁷ *Id.*

Pursuant to the *Virginia Cellular Order*, however, and notwithstanding the opportunity afforded to the rural LECs to disaggregate support and the Commission’s previous view that this opportunity obviates concerns over cream skimming, competitive ETC applicants must now show that the proposed redefinition does not have the “same effect” as cream skimming. Specifically, the Commission noted that “for reasons beyond a competitive carrier’s control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier’s license covers. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural cream skimming.”³⁸

In the *Virginia Cellular Order*, the Commission required the ETC applicant to undertake a population density analysis for partially-served study areas.³⁹ The Commission agreed with requests to disaggregate study areas where the difference between the population densities of the wire centers served by the wireless applicant compared to the population densities of the wire centers not served by the applicant was “not significant enough” or where it found “very little disparity between the population densities.”⁴⁰ In a particular instance, however, where Virginia Cellular was constrained by its licensed service area to serve only one of the four wire centers constituting the NTELOS study area, and this one wire center happened to be the “sole low-cost, high-density wire center,” the Commission found that the “great disparity” in population

³⁸ *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338 at ¶ 33 (rel. Jan. 22, 2004), *recon. pending* (“*Virginia Cellular Order*”).

³⁹ *Id.* at ¶ 42.

⁴⁰ *Id.* at ¶ 34 n.110.

densities (by a factor of approximately 8 times) warranted a finding that Virginia Cellular could not be designated ETC status in this single wire center.⁴¹

Similarly, in the *Highland Cellular Order*, the Commission denied a redefinition request based on an extreme disparity in relative population density between the served and unserved wire centers. In *Highland Cellular*, this was demonstrated through the presence of 94 percent of Highland Cellular's potential ETC customers in the rural telephone company's four highest-density wire centers.⁴²

In Exhibit E, Dobson provides the population density data for the rural LEC study areas where it seeks redefinition. Applying the criteria established in *Virginia Cellular* and *Highland Cellular*, these data demonstrate that there are no instances of a "great disparity" between the density of the wire centers Dobson serves and those that it does not. In fact, in many instances, the areas Dobson is licensed to serve are actually *lower* density than the areas it cannot serve, such that Dobson will be *undercompensated* for serving high cost customers in these areas. Nevertheless, Dobson commits that it will not seek to compel the rural LECs to file a disaggregation plan to ensure appropriate compensation to competitive ETCs in these instances. Moreover, in every case where the density disparity between served and unserved wire centers favors Dobson, the disparity is substantially smaller than in the instance in the *Virginia Cellular Order* where the Commission found that redefinition was not in the public interest. As a result,

⁴¹ *Id.* at ¶ 35.

⁴² *Highland Cellular Order* at ¶ 31. In reaching this conclusion, the FCC inexplicably included in its analysis the highest population density wire center, Richlands, despite the fact that this wire center was only partially served and the Commission concluded in the same order that it would not grant ETC status for partially served rural LEC wire centers. See *Highland Cellular Order* at ¶ 33.

the rural telephone companies' study areas should be redefined as proposed. The population density data reveal the following:

- Citizens Tel. Co. of NY – The average population density⁴³ of the wire centers served (33) is significantly less than the average density of the unserved wire centers (68). Accordingly, there is no potential for cream skimming and Dobson will be undercompensated for serving high cost customers in this company's study area. The FCC should grant this redefinition request. Furthermore, as mentioned above, Citizen Tel. Co. of NY elected to disaggregate under Path 3, further minimizing any cream skimming concerns.
- Middleburgh Tel. Co. – The average population density of the wire centers served (41) is less than the average density of the unserved wire centers (51). Accordingly, there is no potential for cream skimming and the FCC should grant this redefinition request.
- Taconic Tel. Co. – The average population density of the wire centers served (62) is less than the average density of the unserved wire centers (64). Accordingly, there is no potential for cream skimming and the FCC should grant this redefinition request.
- Empire Tel. Corp. – Although the wire centers served have a somewhat higher population density (68 served, 39 unserved), the served wire centers are only 0.6 times denser than the unserved wire centers. This is strikingly different from the

⁴³ Throughout this application, population densities are expressed in terms of persons per square mile (the same metric used by the FCC in the *Virginia Cellular Order*).

NTELOS case in *Virginia Cellular*, where the served wire centers were 8 times denser than the unserved wire centers. Thus, the Commission should grant this redefinition request.

- State Tel. Co. – This company’s study area is made up of two wire centers, and Dobson’s licensed area fully encompasses only one of them. Although there is a disparity in the density of the two wire centers, and Dobson serves the higher density of the two, the disparity in the densities is not that great (218 vs. 145). The difference is only 1.5 times, as compared to eight times in the NTELOS case. In addition, both wire centers are relatively high density. Accordingly, this is clearly distinguishable from NTELOS and does not constitute a “great disparity.” The Commission should grant this redefinition request.
- Citizens Telecom-NY – This example presents the largest disparity of average population densities, but the disparity is still substantially less than in the NTELOS example in the *Virginia Cellular Order*. Here, the density disparity is 2.9 times (114 vs. 39), while the disparity in the NTELOS case was 8 times; thus, this too does not constitute a “great disparity.” Also, significantly, Citizens Telecom-NY *did* choose to disaggregate support under Path 3. This substantially reduces any potential cream skimming concerns,⁴⁴ because Citizens Telecom-NY’s support already is appropriately targeted to its lowest-cost wire centers.

⁴⁴ In the unlikely event the Commission finds that this designation would raise cream skimming concerns, Dobson proposes to withdraw its application as to one or more “low cost” wire centers, in order to equalize the ratio, rather than being completely denied ETC status for Citizens Telecom’s study area.

Rural Carriers' Special Status

The Joint Board urged the Commission to consider the rural carriers' special status under the Telecommunications Act of 1996.⁴⁵ Congress mandated this public interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.⁴⁶ In deciding whether to confer ETC status on Dobson, the Commission will weigh numerous factors to determine how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, if the Commission finds that Dobson's ETC designation is in the public interest, it will have duly considered the special status of the rural carrier for purposes of determining whether Dobson's service area designation should be adopted for federal universal service funding purposes. As described below in Section IV, designating Dobson as an ETC will serve the public interest. No action in this proceeding will affect or prejudice any future action this Commission or the NY PSC may take with respect to the LECs' status as a rural telephone company.

Administrative Burden

Finally, the Joint Board recommended that the Commission consider the administrative burden a rural LEC would face by calculating its costs on a basis other than its entire study area.⁴⁷ In the instant case, Dobson's request to define its service area along boundaries that differ from rural LEC study area boundaries is made solely for ETC designation purposes.

⁴⁵ See *Recommended Decision*, 12 FCC Rcd at 180.

⁴⁶ *Id.*

⁴⁷ *Id.*

Defining the service area in this manner will in no way impact the way the affected rural LECs calculate their costs, but it is solely to determine the geographical area in which Dobson is to be designated as an ETC. Definition of Dobson's service area as proposed in this Petition will not impose any additional burdens on rural LECs. Accordingly, Dobson respectfully requests that the Commission designate it as an ETC throughout the proposed ETC service area as shown on the map attached as Exhibit C hereto.

IV. DESIGNATING DOBSON AS AN ETC WILL SERVE THE PUBLIC INTEREST.

Pursuant to 47 U.S.C. § 214(e)(6), the Commission considers public interest factors in designating ETCs. The Commission recently clarified its public interest analysis in considering ETC applications in the *Virginia Cellular Order*.⁴⁸ With respect to rural telephone company study areas, the Commission in the *Virginia Cellular Order* concluded that the "value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas."⁴⁹ The Commission considered "whether the benefits of an additional ETC ... outweigh any potential harms."⁵⁰ In this process, the Commission considered "the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame."⁵¹

⁴⁸ *Virginia Cellular Order* at ¶¶ 26-35.

⁴⁹ *Id.* at ¶ 4.

⁵⁰ *Id.* at ¶ 28.

⁵¹ *Id.*

Dobson provides wireless services to mainly rural and suburban markets across 16 states; its commitment to serving the needs of rural America is a matter of public record. With the Dobson family's roots in the rural telephone business, the business plan for Dobson's wireless operation has always been to provide service to areas in rural America where people live and work. Accordingly, unlike some other wireless carriers, Dobson does not focus on providing service solely along the roads and highway corridors that bypass the bulk of the rural population and primarily benefit non-resident customers driving through the area. Furthermore, Dobson has deployed a fully digital network, and is in the process of implementing a GSM/GPRS overlay over its existing TDMA networks, as well as EDGE technology, which will enable the provision of advanced data and information services.

Dobson has already made significant expenditures to construct cell sites in the rural and high cost portions of its licensed areas where people live and work, including higher concentrations of cell sites required to implement digital cellular service,⁵² as well as to deploy the equipment necessary to bring the advanced technologies mentioned above to rural subscribers. However, strikingly unlike its rural LEC counterparts, Dobson has expended these funds in these high-cost areas without receipt of universal service support funding. At the same time, Dobson routinely fulfills its obligations as a substantial contributor to the universal service fund and is constrained by competitive market forces to maintain pricing plans (and advanced services) that are similar to those offered by nationwide wireless providers (and which are made available in urban areas). Dobson, like other similarly situated wireless carriers that operate in a

⁵² Digital cellular phones typically operate at much less output transmitting power than analog phones. Accordingly, as wireless carriers transform their networks from purely analog (continued on next page)

fiercely competitive market and do not receive guaranteed returns on investment, cannot simply raise rates, and currently must fund these expenditures primarily by reliance on private sources of capital.

Although Dobson has managed thus far to privately finance a high level of service to rural areas, changes in the economics of rural wireless service now lead Dobson to seek funding to ensure that “consumers in ... rural ... and high cost areas ... have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas.”⁵³ As noted above, Dobson has never focused its facilities deployment solely on highway corridors that generate roaming revenue, but the existence of such corridors in Dobson’s service area has provided valuable revenue streams to finance costly deployment to serve rural customers outside the corridors. Today, however, there is greater facilities deployment by large national carriers of their own facilities along the corridors,⁵⁴ and marketplace pressures have reduced intercarrier roaming rates nationwide.

Also, technological factors result in higher costs today due to a need for a larger number of cell sites, spaced more closely together, to provide comparable service in rural America. Low-powered digital handsets have become standard in the equipment marketplace, and these require greater proximity to cell sites than did the higher-powered handsets and car phones that were prevalent during Dobson’s initial deployment. High-bandwidth services such as EDGE

technology to mixed analog and digital, they need to deploy additional cell sites to account for the substantially weaker signal being received from a digital cell phone.

⁵³ 47 U.S.C. § 254(b)(3).

⁵⁴ An important consequence of this trend by Dobson’s competitors to build out only the highway corridors in rural areas is that Dobson’s roaming revenue is decreasing, so that Dobson must place greater reliance on revenue from locally-based subscribership.

and, ultimately, UMTS also require a stronger signal (and hence more closely spaced cell sites) to work optimally. These factors – reduced ability to rely on intercarrier subsidies through roaming and higher deployment costs due to technology changes – are the primary impetus for Dobson’s decision to seek ETC designation.

As explained herein, Dobson’s designation satisfies the more rigorous public interest standard established in the *Virginia Cellular Order* for rural study areas; thus, Dobson should be designated as an ETC throughout the area requested in this application.⁵⁵

Increased competitive choice. Designating Dobson as an ETC in New York will further the public interest by bringing the benefits of competitive, advanced wireless services by a carrier with a commitment to rural service to New York’s telecommunications consumers in rural and high-cost areas. The Commission has recognized the advantages wireless carriers can bring to the universal service program. In particular, the Commission has found that “imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service.”⁵⁶ One of the principal goals of the Telecommunications Act of 1996 was to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of

⁵⁵ Parties have filed petitions for reconsideration of the *Virginia Cellular Order*. Accordingly, Dobson reserves the right to amend its commitments made herein to comply with any resulting future orders or rule changes.

⁵⁶ *First Report and Order*, 12 FCC Rcd at 8882-83.

new telecommunications technologies.”⁵⁷ Increased competition drives down prices, improves service quality, and promotes the development of advanced communications.

The Commission has concluded that “designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”⁵⁸ Designating Dobson as an ETC in its requested service areas will promote competition and provide increased benefits to consumers, including customer choice and access to innovative services. As an ETC and recipient of high-cost USF support, Dobson will be placed on a competitively equal footing with the incumbent LEC. As a result, Dobson would provide New York’s rural consumers with an enhanced ability to choose their telecommunications provider based on their own needs, and not be restricted to the services offered by an incumbent rural telephone company who can leverage its singular advantage as a recipient of USF support over its competitors. Recipients of Lifeline support would similarly benefit from the availability of a competing source of telecommunications service, which can drive down rates to even more affordable levels. Furthermore, all rural consumers will benefit from Dobson’s use of USF support to improve and expand existing service, as described more fully below. Accordingly, designation of Dobson as an ETC will allow the consumers in its requested service areas to choose their provider based on the price, services, service quality, customer service and service availability offered by openly competing companies.

Impact of the designation on the universal service fund. As noted in the *Virginia Cellular Order*, funding to competitive ETCs has resulted in a very small percentage increase in the size

⁵⁷ Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996).

⁵⁸ *Western Wireless Corp.*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 16 FCC Rcd 48, 55 (2000), *aff’d*, 16 FCC Rcd 19,144 (2001).

of the fund, while USF disbursements to landline carriers continue to substantially increase the fund.⁵⁹ Support to Dobson in New York would not, under any circumstances, constitute an appreciable portion of the total USF funding requirement. Therefore, the impact of granting Dobson ETC status as requested herein would be so minor that it does not present any significant reason not to grant this petition.

Unique advantages and disadvantages of the competitor's service offering. Dobson's service offerings will include features and functions driven by customer needs, and will include unique advantages over those offered by the incumbent rural telephone companies. Like Virginia Cellular's offering, Dobson's service will provide benefits to customers in situations where they do not have access to a wireline telephone.⁶⁰ Dobson's service also will provide the benefits of mobility to rural consumers who often must drive significant distances to places of employment, stores, schools, and other critical community locations.⁶¹ In addition, Dobson's wireless universal service offering will provide access to emergency services that can "mitigate the unique risks of geographic isolation associated with living in rural communities."⁶² Also, because Dobson's local calling area is larger in every case than those of the incumbent LECs against whom it competes, Dobson customers will be subject to fewer toll charges.⁶³

⁵⁹ *Virginia Cellular Order* at ¶ 31 & n.98.

⁶⁰ *Id.* at ¶ 29.

⁶¹ *See id.*

⁶² *Id.*

⁶³ *Id.* As a result of the downward pressure on prices caused by the robust competition among nationwide carriers, Dobson also offers nationwide calling plans that are competitive with those advertised and offered by nationwide carriers and are available in urban areas. As a result, (continued on next page)

The availability of Dobson's universal service offering also will serve the public interest with its ability to remain functional in emergencies.⁶⁴ For example, during the extensive blackout throughout the northeast U.S. in August 2003, Dobson's affected networks (including markets in New York that are the subject of this petition) handled a substantial increase in call volume with little reduction in service despite the loss of commercial power to 300 cell sites. This is because Dobson has a network emergency plan in place and ensures that all of its cell sites have backup power, including battery power as well as many with diesel-powered generators.⁶⁵

In addition, Dobson's current project to overlay its network with GSM/GPRS technology, in conjunction with its high-speed data EDGE installation in the current year, will give Dobson customers access to advanced data and information services. Both GPRS and EDGE technology permit services such as mobile Internet and email access, as well as multimedia services such as transmission of pictures. EDGE technology enables these applications at speeds faster than wireline dial-up access, and presents a real alternative to other means for providing broadband Internet access services that are of limited, if any, availability in many rural areas.⁶⁶

rural consumers would also benefit from the availability of such nationwide calling plans that the rural LECs simply cannot offer.

⁶⁴ See *Federal-State Joint Board on Universal Service, Recommended Decision*, FCC 04J-1 at ¶ 30 (rel. Feb. 27, 2004) ("*ETC Recommended Decision*").

⁶⁵ See Press Release, Dobson Communications Corporation, *Dobson Communications' Wireless Network Passes the Test; Northeast Power Outage Forces 300 Cellular Sites to Switch to Back-Up Power* (Aug. 15, 2003), available at www.dobson.net.

⁶⁶ The availability of DSL service is limited by the distance from the local telephone company central office to the potential subscriber. Accordingly, while DSL may be offered in rural population centers where the rural LEC has made the necessary investment, it is of limited availability to those living in sparsely populated outlying areas and/or great distances from a
(continued on next page)

Although these services are not supported by the universal service support mechanism (and Dobson does not seek USF funding to support their deployment), their availability will benefit rural customers to whom Dobson provides universal service. Most recently, President Bush has called for “universal, affordable” broadband access to all U.S. consumers by 2007, and, in response, Chairman Powell stated “[u]niversal and affordable access to broadband is vital to the health and future growth of our economy.”⁶⁷ Furthermore, as the Commission has already recognized, “the network is an integrated facility that may be used to provide both supported and non-supported services,” and the Commission is committed to “ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services.”⁶⁸ The availability of these services to customers of Dobson’s universal service offering will serve the public interest and advance the goal of making “comparable” services available to customers in rural areas,⁶⁹ as well as meet the President’s vision of achieving universal and affordable broadband access nationwide.

rural LEC central office. Cable modem service is available in few rural areas due to the high cost of deploying coaxial or fiber cables to remote areas. Finally, satellite services offering broadband Internet access tend to have very high initial equipment costs and depend on the availability of a service technician to travel to the installation site.

⁶⁷ Mike Allen, *Bush Sets Internet Access Goal; Talk of High-Speed Hookups Added to Homeownership Speech*, Wash. Post, Mar. 27, 2004, at A4, available at 2004 WL 74475298; FCC News Release, *Powell Comments on President’s Call for Universal, Affordable Broadband* (rel. Mar. 26, 2004).

⁶⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, 18 FCC Rcd 15,090, 15,096-97 (2003) (“*Supported Services Order*”).

⁶⁹ 47 U.S.C. § 254(b)(3).

Commitments regarding quality of telephone service. In considering Virginia Cellular's petition, the Commission addressed concerns raised by rural telephone companies over Virginia Cellular's service quality.⁷⁰ In this regard, the Commission acknowledged specific commitments from the applicant to make efforts to serve potential customers "within Virginia Cellular's licensed service area but outside its existing network coverage."⁷¹ In particular, Virginia Cellular committed to (1) use universal service support to build new towers and facilities in the designated service area to offer better coverage; (2) comply with the Cellular Telecommunications and Internet Association ("CTIA") Consumer Code for Wireless Service; and (3) provide the Commission with the number of consumer complaints per thousand handsets on an annual basis.⁷²

Like the applicant in the *Virginia Cellular Order*, Dobson commits to use the support it receives for network expenditures for the provision, maintenance, and upgrading of its facilities and services within the designated area.⁷³ Because Dobson is starting from a different point than that applicant appears to have been, however, the public interest benefits to consumers in the designated areas will be correspondingly greater. Under the calculations specified in the FCC's rules, Dobson's network in New York already provides coverage to **100%** of the pops throughout its Cellular Geographic Service Area ("CGSA") in New York, which for every

⁷⁰ *Virginia Cellular Order* at ¶ 18 (citing to claims of "wireless signals that are sporadic or unavailable in some of the mountainous regions that Virginia Cellular proposes to serve"), ¶ 30 (noting arguments that wireless services may be subject to "dropped calls and poor coverage").

⁷¹ *Id.* at ¶ 15.

⁷² *Id.* at ¶ 30.

⁷³ *See* 47 U.S.C. § 254(e).

market is either coterminous or substantially coterminous with the RSA/MSA boundary.

Nevertheless, Dobson acknowledges that certain “dead spots” exist within the proposed designated service area.⁷⁴ Dobson intends to use the bulk of the support to address coverage and quality issues such as these. Specifically, Dobson would use the support to build new cell sites and other infrastructure that would not be built but for receipt of universal service funding. Absent support, Dobson must rely primarily on private financing for infrastructure investment and, as noted above, Dobson increasingly must derive the bulk of its revenues from locally-based subscribers in the wake of declining roaming revenues. As a result, real-world considerations require Dobson to expend its limited funds with a priority on maximizing coverage to higher population densities that will generate revenue to support the investment. Hence the importance of support to ensuring the availability of comparable service in rural and high cost areas.

Dobson’s proposed improvement projects for 2004-2005 are itemized in Exhibit F.⁷⁵ These projects, which represent a financial commitment that is substantially more than Dobson would receive from the high-cost fund, will mitigate “dead spots” in coverage⁷⁶ and provide coverage to additional portions of the designated service area, as listed in Exhibit F.⁷⁷ The areas

⁷⁴ As the Commission acknowledged in the *Virginia Cellular Order*, the Commission’s Rules permit a finding of full coverage despite the existence of dead spots. *Virginia Cellular Order* at ¶ 23 (citing 47 C.F.R. § 22.99).

⁷⁵ Dobson must reserve flexibility in implementing these projects in order to meet changes in consumer demand and other appropriate considerations typically encountered with wireless network deployments.

⁷⁶ As the *Virginia Cellular Order* acknowledges, under the Commission’s rules “[s]ervice within dead spots is presumed.” *Virginia Cellular Order* at ¶ 23 (citing 47 C.F.R. § 22.99).

⁷⁷ Dobson would be able to implement these additional cell sites within 18 months of receiving ETC designation.

covered by these new cell sites have a substantially lower population density than the areas already covered, such that the economics ordinarily would not support the required expenditures. Several of these cell sites also will create or improve coverage on well-traveled roads, improving access to E911 within the service area, as well as on truly isolated roads where wireless access to E911 service would potentially be the only available option in case of emergency. Consistent with measures Dobson employs in furtherance of emergency preparedness and homeland security, the support also will fund facilities improvements to help assure continuity of service within the designated area, such as installation of additional back-up batteries and generators at mobile switching facilities and cell towers. In some cases, funding also will be used to establish microwave links for backhaul that will serve as backup and/or overflow for ILEC-provided transport in cases of emergency.⁷⁸ Dobson takes seriously the service responsibility that comes with ETC designation and will use the support it receives to help fulfill this responsibility.

Dobson is already a signatory to and agrees to be bound by CTIA's Consumer Code for Wireless Service.⁷⁹

In addition, Dobson agrees to make the same efforts enumerated in the *Virginia Cellular Order*⁸⁰ in the unlikely event a customer finds it is not able to receive service within Dobson's

⁷⁸ Loss of ILEC-provided backhaul circuits was an issue identified in a (generally favorable) review of wireless carriers' performance in the recent East Coast blackout. *Initial Report by the New York Department of Public Service on the August 14, 2003 Blackout*, New York DPS, Feb. 2004 at 91, available at <http://www.dps.state.ny.us/fileroom/doc14463.pdf>.

⁷⁹ See Press Release, Cellular Telecommunications & Internet Association, *Wireless Industry Unveils 10-Point Consumer Code* (Sept. 9, 2003), available at www.wow-com.com/pdf/CTIA_PR.pfd (listing participating carriers, including Dobson); see also *CTIA Unveils Voluntary Consumer Code of Conduct*, *Comm. Daily*, Sept. 10, 2003 (same).

⁸⁰ *Virginia Cellular Order* at ¶ 15.

designated service area. Specifically, in instances where Dobson receives a request for service from a potential customer within the designated service area but outside its existing network coverage, it will take a number of steps to provide service at the billing address that include determining whether: (1) the requesting customer's equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest Dobson cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier's facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to provide service. If, after following these steps, Dobson still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year, as well as the number of consumer complaints it receives per thousand handsets, with respect to the requested service areas.⁸¹

Competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. As shown above, Dobson is an established wireless carrier with a demonstrated commitment to serving rural areas of the country. Dobson can offer high-quality services almost immediately after receiving ETC designation, and promptly will implement its network improvement commitments.

In light of the above, it is plain that grant of this Petition will served the public interest and meets the criteria set forth in the *Virginia Cellular Order*. The public interest will be further

⁸¹ See *id.*

served by the expeditious grant of this Petition. The Commission has recognized that “excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas,” and therefore the Commission made a public commitment to resolve ETC petitions within six months or less after they are filed.⁸² The Commission should expeditiously grant this Petition.

V. HIGH-COST CERTIFICATION

Dobson certifies that all high-cost universal service support received in New York will be used only for the provision, maintenance, and upgrading of services and facilities for which the support is intended. *See* Exhibit B.

VI. ANTI-DRUG ABUSE CERTIFICATION

Dobson certifies that no party to this Petition is subject to a denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, and Sections 1.2001-1.2003 of the Commission’s rules, 47 C.F.R. §§ 1.2001-1.2003. *See* Exhibit B.


⁸² *Twelfth Report and Order*, 15 FCC Rcd at 12,255-56.

V. CONCLUSION

For the reasons set out herein, Dobson respectfully requests the Commission designate it as an ETC in New York on an expedited basis.

Respectfully submitted,

DOBSON COMMUNICATIONS CORPORATION
AMERICAN CELLULAR CORPORATION

By: 
Thomas A. Coates
Vice President, Corporate Development for
Dobson Cellular Systems, Inc. and
American Cellular Corporation
14201 Wireless Way
Oklahoma City, OK 73134
(405) 529-8500

May 10, 2004

Exhibit A

Letter from the New York Department of Public Service

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN
Chairman
THOMAS J. DUNLEAVY
JAMES D. BENNETT
LEONARD A. WEISS
NEAL N. GALVIN



DAWN K. JABLONSKI
General Counsel
JANET HAND DEIXLER
Secretary

March 27, 2003

TO WHOM IT MAY CONCERN:

Re: Nextel CMRS Jurisdiction

We have received a letter request from NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") for a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 *et seq.* In response to this request, please be advised that the New York State Public Service Law (PSL) §5 provides that:

Applications of the provisions of this chapter [i.e., the PSL] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the commission [i.e., the NYS Public Service Commission] . . . makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under PSL §5. Consequently, based on the representation by Nextel Partners that it is a CMRS provider, Nextel Partners would not be subject to the application of the PSL, and consequently the jurisdiction of the New York Public Service Commission, for the purposes of making the Eligible Telecommunications Carrier designation.

Sincerely,

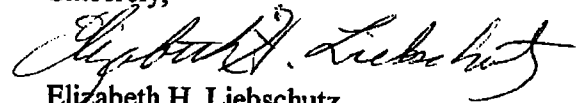

Elizabeth H. Liebschutz
Assistant Counsel

Exhibit B

Declaration of Thomas A. Coates

DECLARATION OF THOMAS A. COATES

I, Thomas A. Coates, do hereby declare under penalty of perjury that:

1. I am Vice President, Corporate Development, for Dobson Cellular Systems, Inc. ("DCS") and American Cellular Corporation ("ACC"), both of which are wholly owned subsidiaries of Dobson Communications Corporation.
2. I have reviewed the foregoing Joint Petition for Designation as Eligible Telecommunications Carriers in the State of New York ("Petition") and certify that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge.
3. To the best of my knowledge and belief, DCS and ACC are not subject to the jurisdiction of the New York Public Service Commission. DCS and ACC are therefore seeking designation by the FCC as Eligible Telecommunications Carriers ("ETCs") under Section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6).
4. DCS and ACC currently offer and are able to provide, within their designated service areas, the functionalities identified in 47 C.F.R. § 54.101(a) listed below and fully described in the Petition:
 - a. voice grade access to the public switched telephone network;
 - b. local usage;
 - c. dual tone multi-frequency ("DTMF") signaling or its functional equivalent;
 - d. single-party service or its functional equivalent;
 - e. access to emergency services;
 - f. access to operator services;
 - g. access to interexchange service;
 - h. access to directory assistance; and
 - i. toll limitation for qualifying low-income consumers.
5. A carrier requesting designation must certify that it offers the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." DCS and ACC will provide the supported services using their own network infrastructure, which includes the antennas, cell sites, towers, trunking, mobile switching, and interconnection facilities used by DCS and ACC to serve their existing customers. These facilities are in place.
6. DCS and ACC will advertise the availability of their universal service offerings and the corresponding rates for those services using media of general distribution as described in the Petition throughout their designated service areas.
7. All of the high-cost universal service support received by DCS and ACC in New York will be used only for the provision, maintenance, and upgrading of services and facilities for which the support is intended.
8. To the best of my knowledge, neither DCS nor ACC, nor their officers, directors, or persons holding five percent or more of either of their outstanding stock or shares (voting and/or non-voting), as specified in Section 1.2002(b) of the Commission's rules, are subject to a denial of federal benefits, including FCC

benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C.
§ 862.

The foregoing is true, complete, and correct to the best of my knowledge,
information and belief.

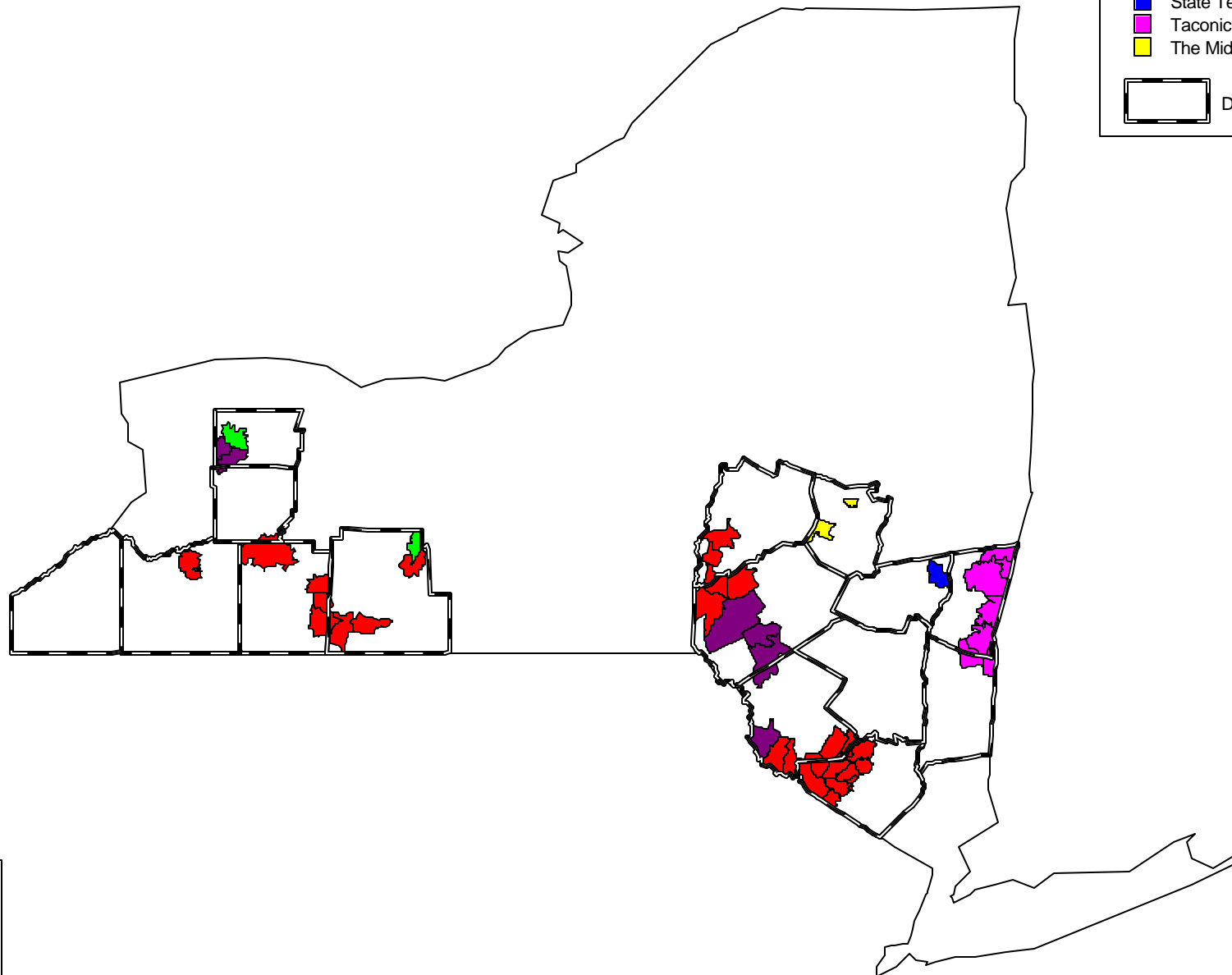

Thomas A. Coates

Dated: May 10, 2004

Exhibit C

Dobson's Proposed ETC Service Area

Proposed ETC Service Area (Redefinition)




- RURAL LECs
- CITIZENS TEL CO OF NY
 - CITIZENS TELECOM-NY
 - Empire Tel. Corp.
 - State Tel. Co.
 - Taconic Tel. Corp.
 - The Middleburgh Telephone Com
-  Dobson Service Area

Exhibit D

Rural LEC Study Areas Not Served by Dobson in Their Entirety and Requiring Redefinition Along Wire Center Boundaries

CITIZENS TEL CO OF NY (Study Area Code 154534)

Wire Center Name	Wire Center Code
Corfu	<u>CORFNYXA</u>
Darien	<u>DARNNYXA</u>
Downsville	<u>DSVLNYXA</u>
Narrowsburg	<u>NRBGNYXB</u>
Roscoe	<u>ROSCNYXA</u>
Walton	<u>WLTNNYXA</u>

CITIZENS TELECOM-NY (Study Area Code 154532)

Wire Center Name	Wire Center Code
Alfred	ALFENYXA
Almond	ALMDNYXA
Andover	ANDVNYXA
Bloomingsburg	BMBGNYXA
Barryville	BYVLNYXA
Cuddebackville	CKVLNYXA
Circleville-Thompson Ridge	CRVLNYXA
Denton	DNTNNYXA
Franklin	FKLNXYXA
Fillmore	FLMRNYXA
Gilbertsville	GBVLNYXA
Greenwood	GNWDNYXA
Hammondsport	HMPTNYXA
Jasper	JSPRNYXA
Middletown1, Middletown2	MDTWNYXA
Morris	MRRSXYXA
Masonville	MSVLNYXA
Otisville-Howells	OTVLNYXA
Port Jervis	PTJRNYXA
Scotchtown1, Scotchtown2	SCTWNYXA
Slate Hill	SLHLNYXA
Unadilla	UNADNYXA
Unionville	UVLONYXF
Wurtsboro	WRBONYXA
West Valley	WSVYNYXA

Taconic Tel. Corp. (Study Area Code 150084)

Wire Center Name	Wire Center Code
Canaan	CANNNYXA
Chatham	CHHMNYXA
Copake	COPKNYXA
Hillsdale	HLDLNYXA
Millerton	MLLTNYXA
Pine Plains	PNPLNYXA
West Lebanon	WLBNNYXA

Empire Tel. Corp. (Study Area Code 150093)

Wire Center Name	Wire Center Code
East Pembroke	EPMBNYXA
Pulteney	PLTNNYXA

The Middleburgh Telephone Co. (Study Area Code 150105)

Wire Center Name	Wire Center Code
Bramanville	BRMVNYXA
Summit	SMMTNYXA

State Tel. Co. (Study Area Code 150125)

Wire Center Name	Wire Center Code
Coxsackie	CXSCNYXA

Exhibit E

Population Densities

Exhibit E - Population Data

Citizens Tel. Co. of NY (SAC 154534)

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
APLCNYXA		7,941	24	324
CHMGNYXA		1,745	29	61
CORFNYXA	Yes	2,641	26	100
DARNNYXA	Yes	2,467	39	63
DSVLNYXA	Yes	1,223	63	19
DUNDNYXA		5,593	87	64
HWTNNYXA		1,489	20	75
LCWDNYXA		1,288	35	37
MRTNNYXA		5,718	118	48
NRBGNYXB	Yes	1,793	71	25
ROSCNYXA	Yes	2,057	113	18
SPNCNYXA		4,486	99	45
WAYNNYXA		1,632	27	60
WLTNNYXA	Yes	6,882	200	34

	Avg Pop	Avg Area	Avg Pop Density
Wire Centers Served:	17,063	513	33.3
Wire Centers Not Served:	29,892	440	68.0
All Wire Centers:	46,955	952	49.3

Citizens Telecom-NY (SAC 154532)

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
ADCTNYXA		2,822	36	79
ADMSNYXA		5,398	150	36
ALFENYXA	Yes	5,128	31	167
ALMDNYXA	Yes	1,495	38	39
ANDVNYXA	Yes	2,255	62	36
BLVLNYXA		1,533	37	41
BMBGNYXA	Yes	6,158	30	205
BMLKNYXA		229	83	3
BNBRNYXA		4,062	62	66
BNPTNYXA		988	21	46
BNVLNYXA		7,208	188	38
BRDBNYXA		8,235	64	129
BRFDNYXA		1,507	56	27
BRKSNYXA		2,373	66	36
BYVLNYXA	Yes	2,663	59	45
CATONYXA		5,206	77	68
CGLKNYXA		1,869	533	4
CHBRNYXA		14,627	69	212
CHRTNYXA		4,950	147	34
CKVLNYXA	Yes	2,771	38	72
CNCNNYXA		3,441	109	31
CNDRNYXA		5,008	89	56
CNJHNYXA		6,870	111	62
CRGHNYXA		2,784	28	100
CRNTNYXA		6,730	80	84
CRVLNYXA	Yes	7,150	42	169
CSTVNYXB		2,388	55	44
CYVLNYXA		2,882	26	112
DLTNNYXA		1,445	49	29
DNTNNYXA	Yes	1,366	7	188
DRTRNYXA		1,718	41	42

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
DRYDNYXA		6,924	60	115
EGBANYXA		943	131	7
ERVLNYXA		2,010	33	61
ETNANYXA		2,406	15	160
FHNCNYXA		2,229	27	83
FKLNNYXA	Yes	2,441	76	32
FLMRNYXA	Yes	5,907	139	42
FONDNYXA		3,971	41	96
FOPTNYXA		1,404	264	5
FTPLNYXA		5,919	82	72
GBVLNYXA	Yes	1,090	28	39
GLENNYXA		2,272	62	37
GLVVNYXA		21,522	108	199
GNWDNYXA	Yes	1,003	60	17
GRNENYXA		7,598	132	57
GRTWNYXA		2,148	75	29
GUFDNYXA		952	19	49
HMPTNYXA	Yes	2,308	44	53
HNBLNYXA		5,705	61	93
HNSNNYXA		1,126	34	33
INLKNYXA		1,251	191	7
JSPRNYXA	Yes	1,465	50	29
LKPLNYXA		878	195	4
LLKHNYXA		689	167	4
LNRVNYXA		1,288	30	43
LOWVNYXA		8,907	241	37
LYFLNYXA		2,756	131	21
LYSNNYXA		1,660	20	84
LZRNNYXA		5,575	245	23
MCDNNYXA		1,116	58	19
MDSNNYXA		2,289	33	69
MDTWNYXA	Yes	36,521	27	1,339
MNVLNYXA		1,194	36	33
MRRSNYXA	Yes	2,448	55	45
MRVLNYXA		5,327	59	91
MSVLNYXA	Yes	2,291	95	24
MTUPNYXA		1,290	26	50
MYFDNYXA		3,424	44	78
NBFDNYXA		1,195	24	49
NRCKNYXA		2,800	205	14
NRVLNYXA		5,044	265	19
NRWCNYXA		16,240	166	98
NWBLNYXA		4,089	94	44
NWCMNYXA		1,251	384	3
NWVYNYXA		4,589	56	82
NWWDNYXA		2,229	50	45
OLDFNYXA		1,520	478	3
OTVLNYXA	Yes	8,602	38	227
OXFRNYXA		4,610	95	49
PLSKNYXA		9,517	153	62
REMSNYXA		3,885	89	44
RQLKNYXA		130	308	0
SCTWNYXA	Yes	11,611	22	530
SDNYNYXB		6,437	29	223
SHBNNYXA		4,182	57	73

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
SLHLNYXA	Yes	6,009	31	193
SLSPNYXA		3,846	64	60
SMYRNYXA		449	8	54
SNBLNYXA		978	28	35
SNBRNYXA		11,794	36	325
SNCKNYXA		4,555	124	37
SOTSNYXA		2,553	115	22
STJNNYXA		4,578	86	53
TRHLNYXA		1,820	14	132
TXTNNYXA		1,963	77	26
UNADNYXA	Yes	3,804	50	76
UVLONYXF	Yes	2,746	20	139
VRGLNYXA		1,074	26	41
WHPNNYXA		5,621	81	69
WLLSNYXA		739	178	4
WLTWNYXA		3,115	124	25
WRBONYXA	Yes	4,815	56	86
WSVYNYXA	Yes	2,188	51	43
WTVLNYXA		4,043	46	87
PTJRNYXA	Yes	19,146	112	170

	Avg Pop	Avg Area	Avg Pop Density
Wire Centers Served:	143,381	1,262	113.6
Wire Centers Not Served:	327,057	8,320	39.3
All Wire Centers:	470,438	9,583	49.1

Empire Tel. Corp. (SAC 150093)

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
BRDTNYXA		2,764	67	41
EPMBNYXA	Yes	3,850	46	83
LODINYXA		1,176	35	33
ODSSNYXA		3,150	67	47
PLTNNYXA	Yes	1,404	31	46
PRTBNYXA		2,485	76	33

	Avg Pop	Avg Area	Avg Pop Density
Wire Centers Served:	5,254	77	68.1
Wire Centers Not Served:	9,575	246	39.0
All Wire Centers:	14,829	323	45.9

State Tel. Co. (SAC 150125)

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
CXSCNYXA	Yes	9,434	43	218
RAVNNYXA		9,583	66	145

Avg Pop Density For Wire Centers Served: 218
 Avg Pop. Density For Wire Centers Not Served: 145

Taconic Tel. Corp. (SAC 150084)

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
BRLNNYXA		3,039	86	35
CANNNYXA	Yes	1,253	22	57
CHHMNYXA	Yes	8,665	121	72
COPKNYXA	Yes	3,532	67	53
HLDLNYXA	Yes	2,695	59	45
MLLTNYXA	Yes	2,819	36	78
NASSNYXA		6,799	58	117
PNPLNYXA	Yes	3,124	48	66
STTWNYXA		2,843	54	53
WLBNNYXA	Yes	2,921	48	61

	Avg Pop	Avg Area	Avg Pop Density
Wire Centers Served:	25,009	401	62.4
Wire Centers Not Served:	12,681	198	64.0
All Wire Centers:	37,690	599	63

The Middleburgh Telephone Company (SAC 150105)

WC Code	Fully Served?	Population	Area (Sq. Mi.)	Pop. Density
BRMVNYXA	Yes	759	10	79
MDLBNYXA		8,045	157	51
SMMTNYXA	Yes	1,088	35	31

	Avg Pop	Avg Area	Avg Pop Density
Wire Centers Served:	1,847	45	41.3
Wire Centers Not Served:	8,045	157	51.1
All Wire Centers:	9,892	202	48.9

Exhibit F

Network Improvement Plans

Exhibit F - New York Network Improvement Plan				
Site Name	County	Justification	Population	Redef?
NY5:				
North Franklin	Delaware	This site will expand coverage along Rt. 28 between Oneonta to Delhi.	2,000	R
Marlboro	Ulster	This site will expand coverage along Rt. 9.	2,200	NR
Meredith	Delaware	This site will expand coverage along Rt. 28 from Dehli to Walton.	3,064	R
Downsville	Delaware	This site will expand coverage along Rt. 206 from Walton to East Branch.	1,100	R
Harvard	Delaware	This site will expand coverage along Rt. 206 from Walton to East Branch.	2,000	R
NY6:				
Ancram	Columbia	This site will expand coverage along the Taconic Parkway	1,000	R
NY3:				
Cattaraugus	Cattaraugus	This site will expand coverage on Rt. 353, a well traveled road between 2 casinos.	1,100	NR
Howard	Steuben	This site will expand coverage along Rt. 86 and improve coverage for those living in Olean & Wellsville.	1,000	NR
Andover	Allegany	This site will expand coverage along Rt. 417 & 21 southeast of Wellsville between Wellsville & Hornell.	1,125	R
Prattsburg	Steuben	This site will expand coverage along the west side of Keuka Lake. This area is heavily traveled by tourists.	2,950	R
Bemus Point	Chautauqua	This site will improve coverage for the lakefront, as well as along Rt. 86.	1,000	NR
Pavilion	Genesee	This site will expand coverage at the intersection of Rt. 63, 19 & 20 around the Wyoming/Genessee border. This is a heavily traveled road between counties.	3,000	NR
Warsaw	Wyoming	This site will expand coverage in this county.	1,000	NR
Franklinville	Cattaraugus	This site will expand coverage on Rt. 16 from Olean to Buffalo.	2,739	NR

No Redefinition	
Number of Sites	Population
7	12,039
Redefinition	
Number of Sites	Population
7	13,239
Total Add'l POP Coverage	
Total Sites	
14	25,278

The above chart indicates the new cell sites Dobson commits to construct within the first 18 months of receiving ETC designation and related USF support. Furthermore, as explained in Section IV of the Petition, Dobson would also expend USF funds for various network and infrastructure costs such as emergency back up facilities, microwave backhaul, etc. Dobson must reserve flexibility in implementing these projects in order to meet changes in consumer demand and other appropriate considerations typically encountered with wireless network deployments.